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OFFICE OF PETITIONS

In re Application of :
Neto et al. : DECISION ON PETITION
Application No. 09/838,863 : UNDER 37 CFR 1.78(a)(3)
Filed: 20 April, 2001 :
Atty Docket No. 70317.1200 :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on 11 April and supplemented on 31 July, 2003, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed PCT Application No. PCT/BR99/00084, filed on 13 October, 1999.

The petition is GRANTED.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after 29 November, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;¹

(2) the surcharge set forth in § 1.17(t); and

¹Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate. (see § 1.14).

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The present pending application was filed on 20 April, 2001, and was copending with the above-noted, prior-filed international application, at the time of filing, for which priority is claimed. A reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, which was filed on 31 July, 2003 with the present petition under 37 CFR 1.78(a)(3).

The present nonprovisional application was filed after 29 November, 2000, and the claim for priority herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2). Also, the reference to the prior-filed nonprovisional was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. § 120. Accordingly, having found that the present petition satisfies the conditions of 37 CFR 1.78(a)(3) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120, the petition to accept an unintentionally delayed claim to benefit to prior-filed Application No. PCT/BR99/00084 is granted as of the date of filing the petition.

The granting of the petition to accept the delayed benefit claim to the prior applications under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior applications. In order for the instant application to be entitled to the benefit of the prior applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

The priority claim has been entered in Office PALM records. A corrected filing receipt is enclosed for petitioner's convenience.

The application is being forwarded to Technology Center 3700 for processing the amendment filed on 31 July, 2003, and for consideration by the examiner of the claim under 35 U.S.C. § 365(c) and 37 CFR 1.78(a)(3) for the benefit of the above-noted, prior filed nonprovisional application.

Telephone inquiries related to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

Encl: Corrected Filing Receipt